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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,969	03/15/2004	Herbert Modglin	34781	1348

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EXAMINER

ARK, DARREN W

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,969

Applicant(s)

MODGLIN, HERBERT

Examiner

Darren W. Ark

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-15 and 18-20 is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 9 and 10 is/are rejected.
- 7) ☒ Claim(s) 11, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 11/18/2004. These drawings are approved by the Examiner.

Claim Objections

2. Claims 16, 17 are objected to because of the following informalities:
Claim 16, lines 2 and 3 and Claim 17, lines 1 and 2, the term "the power input" was not previously set forth in Claim 12 and should be included therein.
Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 4 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bryan 4,700,501.

Bryan discloses a rotating assembly (30, 50, 51); a housing (1, 13, 16, 17); a rod mount (72, 73); a controller (21, 25) operable to control the rotating assembly to cause intermittent vibration (25 can be switched either on or off thus controlling the device to

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cause intermittent vibration, such that when on the device vibrates and when off the device ceases to vibrate).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan 4,700,501.

Bryan discloses the clip capable of being received on the rod shaft, but does not disclose the internal diameter being less than one half inch. It would have been an obvious matter of design choice to size the internal diameter of the clip such that it is less than one half inch in order for the clip to be able to fit on rods at or below this size.

7. Claims 5, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan 4,700,501 in view of Evans 4,660,317.

Bryan does a power input or the controller located remotely to the housing. Evans discloses a power input (44) and at least one control (47) located remotely to a housing (16). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the device of Bryan such that its power input and at least one control are located remotely to the housing in view of Evans in order to run the

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device off of an external power source such as a boat's battery and to allow the user to operate the jigging device at a distance from the rod.

In regard to claim 9, Bryan does not disclose the controller with an intensity control. Evans discloses the controller with an intensity control (stroke length adjusting switch 112). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the controller of Bryan such that it has an intensity control in view of Evans in order to provide means for adjusting the amount by which the rod is vibrated so that calm or violent action can be imparted to the lure as desired by the user.

8. Claims 1-4, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan 4,700,501 in view of Lindell et al. 4,680,885.

Alternatively, Bryan does not disclose a controller operable to control the rotating assembly to cause intermittent vibration. Lindell et al. and disclose a controller (delay cycle timer circuit 47 with potentiometer 51, on-off switch 52 is adjustable to allow how often or how long the motor 25 will operate; also 47 is connected to a motor run, stop control logic integrated or interrupter circuit) operable to control the rotating assembly to cause intermittent movement in the fishing line. It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the controller of Bryan such that the controller is operable to control the rotating assembly to cause intermittent vibration in view of Lindell et al. in order to provide a means for pausing the action of the lure so as to replicate a falling or injured baitfish and also to alter the delay time of motion in order to give the fish a chance to strike the bait while it is still.

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In regard to claim 2, Bryan discloses the clip capable of being received on the rod shaft, but does not disclose the internal diameter being less than one half inch. It would have been an obvious matter of design choice to size the internal diameter of the clip such that it is less than one half inch in order for the clip to be able to fit on rods at or below this size.

9. Claims 5, 7, 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bryan 4,700,501 in view of Lindell et al. 4,680,885 as applied to claim 1 above, and further in view of Evans 4,660,317.

Bryan and Lindell et al. do a power input or the controller located remotely to the housing. Evans discloses a power input (44) and at least one control (47) located remotely to a housing (16). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the device of Bryan and Lindell et al. such that its power input and at least one control are located remotely to the housing in view of Evans in order to run the device off of an external power source such as a boat's battery and to allow the user to operate the jigging device at a distance from the rod.

In regard to claim 9, Bryan does not disclose the controller with an intensity control. Evans discloses the controller with an intensity control (stroke length adjusting switch 112). It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the controller of Bryan such that it has an intensity control in view of Evans in order to provide means for adjusting the amount by which the rod is vibrated so that calm or violent action can be imparted to the lure as desired by the user.

Allowable Subject Matter

10. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 12-20 are allowed.

12. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claim 12, the prior art of record does not disclose a jigging device for imparting action to a fishing lure secured to a fishing pole having a handle and a rod extending from the handle, the device comprising the controller including a belt mount operable to allow a user to secure the controller to the user's belt.

In regard to claim 18, the prior art of record does not disclose a jigging device for imparting action to a fishing lure secured to a fishing pole having a handle and a rod extending from the handle, the device comprising a controller including a belt mount operable to allow a user to secure the controller to the user's belt.

Response to Arguments

13. Applicant's arguments filed 11/8/2004 have been fully considered but they are not persuasive.

In regard to applicant's arguments that "Bryan, Evans... fails to disclose... to cause intermittent vibration... controllable vibration based on intensity, duration, delay...", the Examiner contends that the prior art devices such as Bryan, Evans, and Lindell et al. '885 each disclose the device as claimed. Bryan discloses a controller operable to control the rotating assembly to cause intermittent vibration in that a user may manipulate the on-off switch in such a manner that the period of operation of the rotation assembly may be controlled as desired when the device is turned on or off for a desired period of time. Evans discloses a delay and intensity which may be adjusted by the switch (112) that allows the user to select the stroke length which also changes the length of time delay at the bottom of the stroke. Lindell et al. discloses a device with a means for controlling the delay cycle (47, 52, 53). These three devices show that it is obvious to a person of ordinary skill in the art to change the delay time between on and off cycles and also the intensity of the motion to cater to the many scenarios encountered by the user so that the action of the lure may accommodate the desires of the fish to be caught. Furthermore, modification of the device of Bryan such that intermittent cycles of motion produced are in view of Lindell et al. would have been obvious to a person of ordinary skill in the art since such motion translated to the lure would make the lure appear to be injured or hurt and thus cause the fish to be attracted to an easy meal.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nyquist 6,634,134 discloses controls for a jiggling device (see Figs14-25G).

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Darren W. Ark
Primary Examiner
Art Unit 3643

DWA